MEMORANDUM OF LAW

DATE: March 9, 1994

TO: D. Cruz Gonzalez, Risk Management Director

FROM: City Attorney

SUBJECT: Medical Child Support Orders

BACKGROUND

By memorandum dated February 4, 1994, you indicated that on January 1, 1994, the new Federal regulations for Qualified Medical Child Support Orders ("QMCSO") became effective. Pursuant to the new regulations, Risk Management has established new procedures for the enforcement of QMCSO's. You have asked if the new procedures meet the requirements of the Federal regulations. You have also asked a number of specific questions with regard to the new regulations. This memorandum responds to your questions.

ANALYSIS

The new federal regulations to which you refer are part of the 1994 amendments to the Omnibus Budget Reconciliation Act ("OBRA") and are found at 29 U.S.C. section 1169 (1994). 29 U.S.C. section 1169(A) provides:

> The term "QUALIFIED MEDICAL CHILD SUPPORT order" means a medical child support order--
> (i) which creates or recognizes the existence of an alternate recipient's right to, or assigns to an alternate recipient the right to, receive benefits for which a participant or beneficiary is eligible under a group health plan, and
> (ii) with respect to which the requirements of paragraphs (3) and (4) are met.

Subsection (B) provides:

> The term "medical child support order" means any judgment,

> decree, or order (including approval of a settlement agreement) issued by a court of competent jurisdiction which--
> (i) provides for child support with respect to a child of a participant under a group health plan or provides for health benefit coverage to such a child, is made pursuant to a State domestic relations law (including a community property law), and relates to benefits under such plan, or
> (ii) enforces a law relating to medical child support described in section 1396g of Title 42 with respect to a group health plan.

Under the OBRA provisions, QMCSO's are administered pursuant to the laws of the state in which the order is effective. To respond to your questions, we must therefore look to California law.

Effective January 1, 1994, a number of California statutory provisions, formerly found in the Welfare and Institutions Code, the Code of Civil Procedure and the Civil Code were renumbered and collected into the new California Family Code. Review of the Family Code shows that the questions you ask in regard to QMCSO's are all answered in the California Family Code. Initially, I have reviewed the Standard Operating Procedures ("SOP") as requested. The SOP, as developed by Risk Management, appear to be complete and to satisfy California statutory requirements with the exception that the SOP, as drafted, does not address the requirements of California Family Code section 3764(b). That section requires that the employer deliver a copy of the order to the obligor (employee), together with a written statement of the obligor's rights under the law. Those rights would include the right to obtain counsel and attempt to quash the order pursuant to Family Code section 3765 or through any other appropriate means. The written statement should include a brief discussion of the City's duty to provide the information, as well as a brief discussion of the steps the obligor may take to quash the order.

Question 1:

Must the City, as an employer, recognize court orders from states other than California?

There is a statutory presumption that the employee was present in the state from which the court order originated and

that the duties of support applicable under the California laws are the same as those imposed under the laws of the state from which the order came. See, Family Code section 4820. The orders of a sister state may be enforced by two methods. First, the out of state order may be registered with the California courts. The order is then enforceable as though issued from a California court. The enforcement provisions for registered out of state orders are governed by Family Code sections 4852 and 4853.

If the order has not been registered with a California court, it may nevertheless be enforced by a writ of execution as long as the order remains enforceable pursuant to the provisions of Family Code section 5100. The City should not cease payment of health care benefits, absent a contravening order from the originating court or the California court with which the order was registered. If the City or the employee refuses to enforce a valid order, then the obligee ┌non-employee parentσ or the district attorney may pursue either criminal or civil enforcement. See, Family Code sections 4810 and 4820 et seq. Additionally, civil liability may accrue to the City should it refuse to enforce a valid court order.

Question 2:

If the employee has coverage with a health plan dependent on local networks, must the employee change health plans to one which is appropriate for the dependent's coverage and if the employee refuses, is the City obligated by law to make the appropriate change? If the employee wishes to switch from full medical coverage to catastrophic coverage, and this does not meet the intent of the court order, is the City obligated by law to ensure the dependent has appropriate coverage?

Family Code section 3766(b) states that: "┌iσf the obligor ┌employeeσ has made a selection of health coverage inconsistent with the court order, the selection shall not be superseded unless the child to be enrolled in the plan will not be provided benefits or coverage where the child resides." Additionally,

> ┌iσf the obligor has not enrolled in an available health plan, there is a choice of coverage, and the court has not ordered coverage by a specific plan, the employer or other person providing health insurance shall enroll the child in the plan that will reasonably provide benefits or coverage where the child resides.

Family Code section 3766(c).

It appears from these statutory provisions, the City has

two obligations. First, the City needs to ensure that the dependent child has health insurance which is accessible in the area in which the dependent child lives. If the employee fails to select a plan that will provide the appropriate coverage in the area where the dependent child lives and the City offers a health plan in that area, it becomes incumbent upon the City to ensure that the dependent is covered. However, if "no coverage is available for the supported child, the employer or other person shall, within 20 days, return the assignment to the attorney or person initiating the assignment." Family Code section 3766(d). In other instances, the obligor's choice of plans should not be changed by the City, absent agreement from the obligor. As to the second part of the questions, it appears from the statutes that catastrophic coverage alone will not provide adequate health benefit coverage to a dependent child. Although the Family Code does not specifically address the issue of what will be considered sufficient coverage, Family Code section 3750 does indicate that:

> "Health insurance coverage" as used in this article includes all of the following:
>
> (a) Vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan.
>
> (b) Provision for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to a dependent child of an absent parent.

Health care services implies the provision of routine medical services such as immunizations and physicals as well as coverage for more serious illnesses and major medical emergencies. The inclusion of vision and dental care coverage indicates a desire on the part of the Legislature that minor children be covered to the fullest extent possible where health care is concerned.

Question 3:

What information must the City release pursuant to Family

Code section 3771 which provides, in pertinent part: "Upon request of the district attorney, the employer shall provide the following information . . . the home address of the absent parent . . . the policy names and numbers, and the names of the persons covered."

There are a number of provisions which require the information to be provided to the District Attorney. They are not, however, found in the Welfare and Institutions Code. Family Code section 3771, formerly Welfare and Institutions Code section 4726.1, requires the employer, upon receiving a request, to provide the District Attorney with:

(a) The social security number of the absent parent.

(b) The home address of the absent parent.

(c) Whether the absent parent has a health insurance policy and, if so, the policy names and numbers, and the names of the persons covered.

(d) Whether the health insurance policy provides coverage for dependent children of the absent parent who do not reside in the absent parent's home.

Additionally, the employer is required to notify the District Attorney of any lapse in coverage, giving the date the coverage ended, the reason for the lapse in coverage and, if the lapse is temporary, the date upon which coverage is expected to resume.

The Family Code also requires the employer to provide additional information to the District Attorney upon request. Specifically, after receipt of a written request from a District Attorney enforcing the obligation of parents to support their children, pursuant to Section 11475.1 of the Welfare and Institutions Code, every employer shall cooperate with and provide relevant information to the District Attorney. The employer will not incur any liability for this action. The relevant employment and income information shall include, but is not limited to, all of the following:

1. Whether a named person has or has not been employed by an employer.
2. The full name of the employee or the first and middle initial and last name of the employee.
3. The employee's last known residence address.

4. The employee's birth date.
5. The employee's social security number.
6. The dates of employment.
7. All earnings paid to the employee and reported as W-2 compensation in the prior tax year and the employee's current basic rate of pay.
8. Whether dependent health insurance coverage is available to the employee through employment.

The District Attorney's request must include the case file number and at least three of the following identification information:

1. First and last name and middle initial, if known.
2. Social Security Number.
3. Driver's License Number.
4. Birth Date.
5. Last known address.
6. Spouse's name.

If the employer fails to answer this request within the thirty (30) day time period, the employer may be assessed up to five hundred dollars ($500) in civil penalties pursuant to Family Code section 5283.

If you have further questions or need additional clarification, please contact me.

JOHN W. WITT, City Attorney
By
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Deputy City Attorney

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